

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

UNITED STATES OF AMERICA,,

Plaintiff/Respondent,

Civil Case Number: 08-14639

Criminal Number: 02-90009

v.

HON. MARIANNE O. BATTANI

IBRAHIM AHMAD SWEDAN

Defendant/Petitioner.

_____ /

**ORDER DENYING PETITIONER'S APPLICATION FOR A
CERTIFICATE OF APPEALABILITY**

Petitioner Ibrahim Ahmad Swedan has appealed this Court's order denying his § 2255 motion. Now before the Court is Petitioner's Application for a Certificate of Appealability. (Doc. 233).

A certificate of appealability may issue "only if the applicant has made a substantial showing of the denial of a constitutional right." 28 U.S.C. §2253(c)(2). Courts must either issue a certificate of appealability indicating which issues satisfy the required showing or provide reasons why such a certificate should not issue. 28 U.S.C. §2253(c)(3); Fed. R. App. P. 22(b); In re Certificates of Appealability, 106 F.3d 1306, 1307 (6th Cir. 1997). Where, as here, "a district court has rejected the constitutional claims on the merits, the showing required to satisfy §2253(c) is straightforward: the Petitioner must demonstrate that reasonable jurists would find the district court's

assessment of the constitutional claims debatable or wrong.” Slack v. McDaniel, 529 U.S. 473, 484 (2000).

In his Application for a Certificate of Appealability, Petitioner asks the Court to issue a Certificate of Appealability for three issues: (1) Whether his counsel was ineffective for failing to either challenge the indictment or consult a chemist in light of the testimony that the chemical at issue was pseudoephedrine, not the ephedrine charged; (2) Whether the indictment was defective for charging ephedrine instead of pseudoephedrine; and (3) Whether his actual innocence claim should be upheld.

As discussed in the Court’s order denying Petitioner’s § 2255 motion, Swedan’s first two claims fail because, among other things, he has not shown any basis for challenging the indictment, and he has not shown that he was prejudiced by his counsel’s failure to independently test the substance at issue. Reasonable jurists would not find these conclusions to be debatable. Likewise, in light of the fact that a DEA lab analysis concluded that the chemical at issue was ephedrine, Swedan’s argument that he is actually innocent because the substance was really pseudoephedrine fails; and reasonable jurists would not find this conclusion debatable.

Accordingly, Petitioner’s Application for a Certificate of Appealability is **DENIED**.

IT IS SO ORDERED.

s/Marianne O. Battani
MARIANNE O. BATTANI
UNITED STATES DISTRICT JUDGE

Dated: July 7, 2010

CERTIFICATE OF SERVICE

Copies of this Order were served upon Petitioner and counsel of record on this date by ordinary mail and electronic filing.

s/Bernadette M. Thebolt
Case Manager